

1 Amend 2 Cal. Code Regs. §18708 to read:

2 **18708. Legally Required Participation.**

3 (a) A public official is not legally required to make or to participate in the
4 making of a governmental decision within the meaning of Government Code
5 section 87101 unless there exists no alternative source of decision consistent with
6 the purposes and terms of the statute authorizing the decision.

7 (b) Whenever a public official who has a financial interest in a decision is
8 legally required to make or to participate in making such a decision, he or she shall
9 state the existence of the potential conflict as follows:

10 (1) The public official shall disclose the existence of the conflict and describe
11 with particularity the nature of the economic interest. "Particularity" as used in this
12 regulation shall be satisfied if the official discloses:

13 (A) whether the conflict involves an investment, business position, interest in
14 real property, or the receipt of income, loans or gifts;

15 (B) if the interest is an investment, the name of the business entity in which each
16 investment is held; if the interest is a business position, a general description of the
17 business activity in which the business entity is engaged; if the interest is real
18 property, the address or another indication of the location of the property, unless
19 the property is the official's principal or personal residence, in which case the
20 official shall disclose this fact. For income, loans or gifts, the official shall disclose
21 the person or entity that is the source.

22 (2) The public official or another officer or employee of the agency shall give a
23 summary description of the circumstances under which he or she believes the
24 conflict may arise.

25 (3) Either the public official or another officer or employee of the agency shall
26 disclose the legal basis for concluding that there is no alternative source of decision.

27 (4) The disclosures required by this regulation shall be made in the following
28 manner:

29 (A) If the governmental decision is made during an open session of a public
30 meeting, the disclosures shall be made orally before the decision is made, by either
31 the public official or by another officer or employee of the agency. The information

1 contained in the disclosures shall be made part of the official public record either as
2 a part of the minutes of the meeting or as a writing filed with the agency. The
3 writing ~~may~~ shall be prepared by the public official and/or any officer or employee
4 and shall be placed in a public file of the agency within 30 days after the meeting
5 ~~and shall be placed in a public file~~; or

6 (B) If the governmental decision is made during a closed session of a public
7 meeting, the disclosures shall be made orally during the open session either before
8 the body goes into closed session or immediately after the closed session. The
9 information contained in the disclosures shall be made part of the official public
10 record either as a part of the minutes of the meeting or as a writing filed with the
11 agency. The writing ~~may~~ shall be prepared by the public official and/or any officer
12 or employee and shall be placed in a public file of the agency within 30 days after
13 the meeting ~~and shall be placed in a public file~~; or

14 (C) If the government decision is made or participated in other than during the
15 open or closed session of a public meeting, the disclosures shall be made in writing
16 and made part of the official public record, either by the public official and/or by
17 another officer or employee of the agency. The writing shall be filed with the
18 public official's appointing authority or supervisor and shall be placed in a public
19 file within 30 days after the public official makes or participates in the decision.
20 Where the public official has no appointing authority or supervisor, the
21 disclosure(s) shall be made in writing and filed with the agency official who
22 maintains the records of the agency's statements of economic interests, or other
23 designated office for the maintenance of such disclosures, within 30 days of the
24 making of or participating in the decision.

25 (c) This regulation shall be construed narrowly, and shall:

26 (1) Not be construed to permit an official, who is otherwise disqualified under
27 Government Code section 87100, to vote to break a tie.

28 (2) Not be construed to allow a member of any public agency, who is otherwise
29 disqualified under Government Code section 87100, to vote if a quorum can be
30 convened of other members of the agency who are not disqualified under

1 Government Code section 87100, whether or not such other members are actually
2 present at the time of the disqualification.

3 (3) Require participation by the smallest number of officials with a conflict that
4 are "legally required" in order for the decision to be made. A random means of
5 selection may be used to select only the number of officials needed. When an
6 official is selected, he or she is selected for the duration of the proceedings in all
7 related matters until his or her participation is no longer legally required, or the
8 need for invoking the exception no longer exists.

9 (d) For purposes of this section, a "quorum" shall constitute the minimum
10 number of members required to conduct business and when the vote of a
11 supermajority is required to adopt an item, the "quorum" shall be that minimum
12 number of members needed for that adoption.

13
14 **COMMENT:** Nothing in the provisions of subdivision (b)(4)(B) is intended to cause an
15 agency or public official to reveal the confidences of a closed session contemplated by
16 law. For example, under the Brown Act (Government Code sections 54950 et. seq.) a
17 city council may enter a closed session to discuss personnel matters and need not publicly
18 disclose the name of the employee who is the subject of the meeting. (Government Code
19 section 54957.) This regulation does not require a city council person who is legally
20 required to participate in that closed session to disclose that employee's name when the
21 council member makes the record required by this regulation.

22
23 **NOTE:** Authority cited: Section 83112, Government Code. Reference: Sections
24 81002, 81003 and 87101, Government Code.